

UNITED STATES DISTRICT COURT
for the
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2014 SEP -8 PM 1:40

CLEAR
BY ew
DEPUTY CLERK

PEERLESS INSURANCE COMPANY,)
Plaintiff,)
)
v.)
)
ORDWAY ELECTRIC AND)
MACHINE, INC.,)
Defendant.)

Case No. 2:14-cv-190

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Plaintiff PEERLESS INSURANCE COMPANY, by and through its counsel, HAYES & WINDISH, and pursuant to 28 U.S.C. § 2201, hereby COMPLAINS AND ALLEGES against Defendant ORDWAY ELECTRIC AND MACHINE, INC. as follows:

Parties

1. At all times pertinent, Plaintiff Peerless Insurance Company ("Peerless") was a corporation with a principal place of business in Keene, New Hampshire.
2. At all times pertinent, Defendant Ordway Electric and Machine, Inc. ("Ordway") was a corporation with a principal place of business in Graniteville, Vermont.

Jurisdiction and Venue

3. Jurisdiction is based on diversity, and the amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

Factual Background

5. Plaintiff issued a policy of insurance bearing policy number CBP8619903 to

Defendant, with a policy period from January 14, 2012 to January 14, 2013 that included liability coverage limited to \$1,000,000 for each occurrence subject to \$2,000,000 general aggregate limit (“the policy”). A true and accurate copy of said policy is attached hereto as Exhibit 1.

6. The policy was issued in the State of Vermont.
7. The Acadia Insurance Company (“Acadia”), as subrogee of its insured Houle Brothers Granite (“Houle”), has filed a complaint in the United States District Court for the District of Vermont against Ordway, seeking recovery of property damages as a result of a fire that allegedly occurred on or about December 12, 2012 (“Acadia complaint”). See Acadia complaint attached hereto as Exhibit 2.
8. Acadia alleges that the “December 12, 2012 fire was caused by an electrical failure that resulted from the negligence, carelessness, recklessness and negligent acts and/or omissions of defendant Ordway.” See Exhibit 2 at ¶ 18.
9. In the Acadia complaint, Acadia seeks \$1,044,092.75 together with interest, attorney’s fees, and costs of suit. Exhibit 2.
10. Defendant seeks liability insurance coverage, including a defense and indemnification, under the policy issued by Plaintiff, for the damages being sought in the underlying Acadia complaint.
11. Plaintiff contends that the policy does not afford coverage to Defendant for the allegations set forth in the Acadia complaint because the policy does not afford coverage for products-completed operations as set forth by the terms and conditions of the policy; and/or the matters claimed against Defendant are

excluded by the terms and conditions of the policy.

12. Plaintiff contends that it has no duty to defend or indemnify Ordway Electric under the policy in connection with the allegations in the Acadia complaint.
13. An actual controversy exists between Plaintiff and Defendant with respect to Plaintiff's obligation to defend and/or indemnify Defendant from and against the claims asserted by Acadia in the underlying action.
14. Accordingly, a justiciable dispute exists between the parties as to their respective rights and obligations pursuant to the underlying liability policy under the circumstances. Plaintiff embraces its interpretations of the policy and applicable law in good faith and seeks judicial intervention for a resolution of the dispute.
15. Declaratory relief from this Court as requested would terminate all of the uncertainty or controversy between the parties.
16. Plaintiff has no adequate remedy at law.

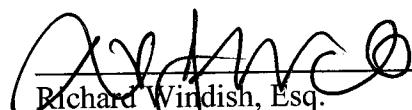
WHEREFORE, Plaintiff Peerless Insurance Company seeks a judgment from this Court pursuant to 28 U.S.C.A. § 2201, declaring the rights and liabilities of the parties and declaring as follows:

1. Policy number CBP8619903 does not provide coverage to Ordway Electric for any of the matters or damages alleged in the Acadia Complaint captioned as *The Acadia Insurance Company v. Ordway Electric and Machine, Inc.* that is pending before this Court as docket number 2:14-cv-115;
2. Defendant Ordway Electric and Machine, Inc. shall be forever enjoined from asserting any claim for proceeds under policy number CBP8619903 for any

matters or damages alleged in the Acadia Complaint, captioned as *The Acadia Insurance Company v. Ordway Electric and Machine, Inc.* that is pending before this Court as docket number 2:14-cv-115;

3. Plaintiff shall be allowed to recoup its costs of defense for any and all claims which are not covered by Policy number CBP8619903.
4. Plaintiff shall be awarded its costs of this suit, including reasonable attorneys' fees, expenses and court costs as may seem equitable and just.
5. Plaintiff shall be awarded such other and further relief as this Court may deem just and proper under the circumstances.

DATED at Woodstock, Vermont this 4 day of September, 2014.



Richard Windish, Esq.

HAYES & WINDISH

45 Pleasant Street

Woodstock, VT 05091

802.457.2123 (fax) 457.3656

rwindish@hayes-windish.com

ATTORNEYS FOR PLAINTIFF

PEERLESS INSURANCE COMPANY